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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,891	04/13/2004	Brant L. Candlore	SNY-T5707.02	4007
24337 7590 02/03/2009 MILLER PATENT SERVICES 2500 DOCKERY LANE RALEIGH, NC 27606				
EXAMINER				
CASTRO, ALFONSO				
ART UNIT		PAPER NUMBER		
2423				
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02/03/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/822,891	Applicant(s) CANDELORE ET AL.
Examiner ALFONSO CASTRO	Art Unit 2423

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-29.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Andrew Y Koenig/
Supervisory Patent Examiner, Art Unit 2423

Continuation of 11. does NOT place the application in condition for allowance because: Independent claims 1, 15, 28 introduce amended features with new limitations which are narrower in scope and would require further consideration. Additionally, applicant's arguments have been fully considered but are not persuasive. Applicant's first argument regarding the Flickinger reference does not disclose or teach which PID is the "original content". A review of Flickinger identifies a system which can be used in a digital television service delivery network with video or multimedia stream such as MPEG signals. Flickinger teaches the insertion of content directly into a portion of the screen during actual programming or replacing existing data in the data stream. Flickinger further discloses substituting or splicing content into the programming being delivered or the programming being viewed. Hence, Flickinger teaches use of MPEG signals for insertion, replacing, substituting or splicing content into programming being delivered or viewed implicitly teaches at least two pieces of content, a first content, being delivered or view, and a second content for inserting, replacing, substituting, or splicing which suggests the programming being delivered or viewed is the original content. While the Flickinger does not specifically reference "original content", one of skill in the art would recognize the implicit teachings of Flickinger.

Applicant's next argument regarding interpreting packet identifier (PID) as defined on page 6, in lines 1-14 of the as filed specification. Applicant's disclosure page 6 lines 12-14 discloses a PID is utilized to distinguish between two or more digital television signals and page 6 lines 14-15 discloses "[n]ormally a single set of packet identifiers is used to identify a particular television program". Hence, interpreting PID in light of applicant's specification, PID identifies a particular television program while Flickinger teaches in the case of digitally encoded video (e.g., MPEG-2) a separate data stream could be created for each program stream, each having a program identification (PID)) which carries the tag used to identify the content. Therefore, a packet identifier (PID) used to identify a particular television program reads on Flickinger.

In response to applicant's argument regarding replacement of original content by substitute content and the substitution of macroblocks of original content by macroblocks of substitution content (Applicant's Remarks 12/29/2008 page 9), the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). As noted above, Flickinger discloses inserting, replacing, substituting, or splicing content into the programming being delivered or the programming being viewed using MPEG signals. The combined teachings of the references would have suggested to those of ordinary skill in the art that inserting content into an MPEG stream (or splice) requires creating new macroblocks that would precisely replace existing ones. Therefore, in response to applicant's arguments against the Flickinger and Hoarty references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986)